

**Before the Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 05-281
Amended Petition of ACS of Anchorage, Inc.))	
Pursuant to Section 10 of the)	
Communications Act of 1934, as amended)	
for Forbearance from Sections 251(c)(3) and)	
252(d)(1) in the Anchorage LEC Study Area)	

**Comments of Integra Telecom, Inc. in Opposition to the
Petition of ACS Anchorage, Inc. for Forbearance**

Integra Telecom, Inc., an Oregon corporation, and its wholly-owned subsidiaries ("Integra") submit the following comments in opposition to the Amended Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area. Under Section 10 of the Communications Act of 1934, as amended¹, the Federal Communications Commission (FCC) should forbear from applying regulation or any provision of the Act to a carrier if the FCC finds that such forbearance will promote competitive market conditions and enhance competition among providers in the relevant market and:

- (a) enforcement is not necessary to ensure that charges, practices, classifications, or regulations in connection with the carrier requesting forbearance are just and reasonable and are not unjustly or unreasonably discriminatory;
- (b) enforcement is not necessary for the protection of consumers; and
- (c) forbearance is consistent with the public interest.²

¹ 47 U.S.C. §160

² 47 U.S.C. §160(a) and (b)

Integra respectfully states that ACS has not submitted sufficient evidence to meet the above tests and requests that the petition should be denied.

Background

Integra is a facilities-based competitive local exchange carrier headquartered in Portland, Oregon providing telecommunications services in the states of Minnesota, North Dakota, Oregon, Utah, and Washington. Integra employs over 600 people and serves over 400 customers in a very important market segment, the small-to-medium size business. The Company has its own network. It owns and operates voice and data switches and has installed some of its own fiber (where it is economically feasible to do so) and leases the majority of its transport and local loops from the dominant local exchange carrier³ on an unbundled basis in order to connect to its customer base.

Integra is not currently providing service in the Anchorage LEC study area, but the FCC's decision in this docket is extremely important to the development of competition through-out the United States. The decision in this matter, similar to the decision on the Qwest Omaha, Nebraska Forbearance Petition⁴, will impact Integra and all competitive telecommunications carriers.

Here, claiming it has met the requirements under Section 10, ACS has requested forbearance from its unbundling obligations under Section 251(c)(3)

³ Integra leases loops and transport pursuant to the terms of various interconnection agreements from Qwest in Minnesota, North Dakota, Oregon, Utah, and Washington, and from Verizon in Oregon and Washington. Integra has no interconnection agreements with and does not collocate with or lease facilities from any cable company in any of its operating states.

⁴ *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area, FCC 05-170 (12/2/05)*. Although not actively providing service in Omaha, Integra is a certificated CLEC in the state of Nebraska and deals with Qwest on a day-to-day basis in its five operating states. Integra hereby incorporates herein the comments it previously submitted in Docket 05-170..

and the application of the related Section 252(d)(1) pricing standards for unbundled network elements based primarily upon the existence of competition allegedly flowing from the embedded, residential television plant of the local cable company, General Communications, Inc. ACS has not met the requirements.

Enforcement still is necessary to ensure that ACS's charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory.

By its own admission, ACS is the only entity providing unbundled network elements in the "Anchorage LEC study area", and by ACS's own admission, there is only one entity buying unbundled network elements from ACS in the "Anchorage LEC study area". The monopoly cable system operator in Anchorage, General Communication, Inc. is providing local *residential* telecommunications service over some of its own facilities and is the only entity buying any UNEs from ACS.⁵ GCI may be collocated in 100 percent of ACS's wire centers,⁶ but ACS offered no evidence of any other competitors so collocated. There are no other facilities-based competitors buying UNEs in the "Anchorage LEC study area" and certainly none with sufficient bargaining power to negotiate just and reasonable commercial agreements with ACS.

Unlike Qwest in Omaha, Nebraska, ACS has no Section 271 obligations in Anchorage, Alaska to continue to provide interconnection and loops and transport at just and reasonable rates.

⁵ *Amended Petition, pages 2-3.*

⁶ *Amended Petition, page 27.*

There are no competitive checks on ACS' charges, practices, classifications, or regulations, and without continued regulated access to UNEs and enforcement of Sections 251(c) and 252 requirements, there will be no competitive checks on ACS' services, or its charges, practices, classifications, or regulations in either the wholesale or retail-consumer markets.

Enforcement still is necessary for the protection of the small –to-medium size business customer.

In its petition, ACS has broadly defined the market as the “Anchorage LEC study area”, and a very important distinction for the market that Integra serves is being lost. The market Integra serves needs to be specifically defined and protected.

As previously stated, Integra serves the small-to-medium size business. Typically, this type of customer has 4 to 6 lines and is located in a commercial building. Telecommunications service to residential customers over embedded ‘television cable plant that passes nearly all the households’⁷ is a very different type of service than telecommunications service to the small-to-medium size business customer. The small-to-medium size business customer that is served by the CLEC, like Integra, is not connected to the public switched network by any entity but the dominant LEC who owns the loop to the commercial buildings, not the cable company who owns the loops to the houses in the community. In order for the small-to-medium size business customer to have a competitive choice,

⁷ Amended Petition, page 14.

the owner of the loop attached to the customer's business must be required to provide collocation and access to UNEs.

ACS has not provided any evidence of any other carrier providing loops and/or telecommunications services to the small-to-medium business customer.

Forbearance is not consistent with competition or with the public interest.

The Commission has said time and time again that it supports facilities-based competition and the public's right of choice of carriers. A duopoly between the residential cable company with access to all the households in a particular area and the incumbent local exchange carrier with access to the business and residential customers is not competition. The customer has no choice regarding the embedded plant and who has built to its premises. The facilities in the ground were built long ago by rate regulated, incumbent carriers. It is not economically feasible for any carrier to overbuild or re-build the cable company's or the incumbent's networks to reach the customer, especially the small-to-medium size business customer. But, it is economically efficient (and in the best interest of the public) to require unbundled access to the network, so a facilities-based competitor with its own switch may use the underlying facilities to reach the customer and may use its hard earned capital to build facilities to new areas and new customers. Without regulation and open access to the embedded networks, the majority of the public has no real choice but to go with the carrier who owns the network connection.

To further exacerbate the problem and unfortunately because of its size, the consumer and especially the small-to-medium business customer, itself, has very little bargaining power with the dominant exchange carrier or the cable company. So in a duopoly, the public really has no other choice and the public interest is not served. The public disparately needs the CLEC for any type of competitive choice.

A decision by the FCC here that grants ACS forbearance from its obligations under Sections 251(c) (3) and 252 creates the duopoly that seems to be apparent in the request and evidence submitted by ACS and is a dangerous precedent for the telecommunications industry and the public. The public has no real choice in a duopoly.

Conclusion

For the reasons set forth above, Integra Telecom, Inc. respectfully requests the Commission to deny the Amended Petition of ACS of Anchorage, Inc. filed herein.

Respectfully submitted,

/s/s Karen J. Johnson

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